

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 7 September 2020

**Public Authority:** Department of Health and Social Care  
**Address:** 39 Victoria Street  
London  
SW1H 0EU

#### Decision (including any steps ordered)

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1. The complainant requested information from the Department of Health and Social Care (“the DHSC”) about its tender process for its track and trace app. By the date of this notice the DHSC had not provided a substantive response to this request.
2. The Commissioner’s decision is that the DHSC has breached section 10(1) of the FOIA in that it failed to provide a valid response to the request within the statutory time frame of 20 working days.
3. The Commissioner requires the DHSC to take the following steps to ensure compliance with the legislation.
  - Respond to the complainant’s request in accordance with the FOIA.
4. The DHSC must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Request and response

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5. On 28 May 2020, the complainant wrote to the DHSC via Twitter and requested information in the following terms:

*"Good Morning @DHSCgovuk*

*As per the UK's freedom of information act (gov.uk/make-a-freedom...) I would like to request information is published in reference to how the tender process for the track and trace app was carried out properly and correctly...*

*I find it extremely suspect that the tender was won by the spouse of an MP and would like details on how this process was advertised to relevant, how the winning bid was selected and why it was seen to represent the best choice for the national interest.*

*As per the FOI details provided on the government website; I very much look forward to receiving all the relevant requested information within the next 20 days. If you could kindly confirm receipt of this that would be much appreciated. Feel free to DM for my email."*

6. To date, a substantive response has not been issued.

## Scope of the case

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7. The complainant contacted the Commissioner on 20 June 2020 to complain about the failure by the DHSC to respond to his request.
8. The Commissioner has considered whether the DHSC has complied with its obligations in relation to the time for compliance at section 10(1) of the FOIA.

## Reasons for decision

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9. Section 1(1) of the FOIA states that:

*Any person making a request for information to a public authority is entitled –*

*(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and*

*(b) if that is the case, to have that information communicated to him.*

10. Section 10(1) of the FOIA states that a public authority must respond to a request promptly and "not later than the twentieth working day following the date of receipt."
11. On 7 August 2020 the Commissioner wrote to the DHSC, reminding it of its responsibilities and asking it to provide a substantive response to the complainant within 20 working days.
12. On 7 August 2020, the DHSC wrote to the Commissioner and explained it had not received the request. However it acknowledged that requests made to it by via Twitter *"is a valid means by which to submit an FOI request. However, the tweet has not been forwarded on to the FOI Team or the Ministerial Correspondence and Public Enquiries Unit (MCPE). Neither the FOI Team nor MCPE has sight of tweets"* and it would *"log this request as received on 7 August and the FOI Team will aim to respond within 20 working days"*.
13. On 1 September 2020, the complainant contacted the Commissioner and stated he had not yet received a response from the DHSC.
14. From the evidence provided to the Commissioner in this case, it is clear that the DHSC did not deal with the request for information in accordance with the FOIA. The Commissioner finds that DHSC has breached section 10(1) by failing to respond to the request within 20 working days and it is now required to respond to the request in accordance with the FOIA.

## **Other matters**

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15. As recorded above at paragraph 12, the DHSC stated that it intended to note that the request had been received on 7 August 2020. The DHSC explained that this was because this request was not received as its FOI Team does not have sight of tweets on Twitter. However, regardless of whether its FOI department has sight of the tweet, the original date on which the request was received should be recorded as 28 May 2020.
16. While the Commissioner has adapted a flexible and pragmatic approach to public authorities during the Covid19 pandemic, this approach does not extend to approval of the actions of the DHSC in recording an inaccurate received date for the complainant's request. The DHSC must ensure that it processes requests on the basis of the actual date of receipt.

## Right of appeal

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17. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
LEICESTER,  
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

18. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
19. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Signed** .....

**Ben Tomes**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**